



Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

**RECEIVED**

SEP 27 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of	)	
Petition of WorldCom, Inc. Pursuant	)	
to Section 252(e)(5) of the	)	
Communications Act for Expedited	)	
Preemption of the Jurisdiction of the	)	CC Docket No. 00-218
Virginia State Corporation Commission	)	
Regarding Interconnection Disputes	)	
with Verizon Virginia Inc., and for	)	
Expedited Arbitration	)	
	)	
In the Matter of	)	CC Docket No. 00-249
Petition of Cox Virginia Telecom, Inc., etc.	)	
	)	
In the Matter of	)	CC Docket No. 00-251
Petition of AT&T Communications of	)	
Virginia Inc., etc.	)	

**VERIZON VA'S DIRECT TESTIMONY ON MEDIATION ISSUES  
(CATEGORIES I AND III THROUGH VII)**

**PRICING TERMS AND CONDITIONS**

- CHRISTOS T. ANTONIOU
- MICHAEL A. DALY
- STEVEN J. PITTERLE

AUGUST 17, 2001

## TABLE OF CONTENTS

		<u>Page</u>
1	I. WITNESS BACKGROUND .....	1
2	A. PRICING TERMS AND CONDITIONS PANEL .....	1
3	B. CHRISTOS T. ANTONIOU .....	1
4	II. PURPOSE AND OVERVIEW OF TESTIMONY .....	2
5	III. VERIZON VA’S PRICING ATTACHMENT (Including Issue Nos. IV-32 (Sub-Issue	
6	4), IV-36, and VI-1)).....	4
7	IV. INTERPLAY OF TARIFFS AND INTERCONNECTION AGREEMENTS (Issue	
8	Nos. III-18, IV-30, IV-32, IV-36, IV-85 and VII-23 through VII-25) .....	13
9		
10		

**I. WITNESS BACKGROUND**

**2A. PRICING TERMS AND CONDITIONS PANEL**

**Q. ARE YOU THE SAME PANEL THAT OFFERED DIRECT TESTIMONY ON THE NON-MEDIATION PRICING TERMS AND CONDITIONS ISSUES?**

**A.** Generally, yes. The education and background of the Pricing Terms and Conditions Panel were described in the Direct Testimony on non-mediation issues, including PTC-1. However, Verizon witness Christos T. Antoniou also provides testimony on the Pricing Terms and Conditions issues addressed herein.

**11B. CHRISTOS T. ANTONIOU**

**Q. PLEASE STATE YOUR NAME, TITLE AND BUSINESS ADDRESS.**

**A.** My name is Christos T. Antoniou and my business address is 2107 Wilson Boulevard, 11<sup>th</sup> Floor, Arlington, Virginia.

**Q. BY WHOM ARE YOU EMPLOYED AND IN WHAT CAPACITY?**

**A.** I am employed as an attorney by Verizon Services Corp. ("Verizon"). I assumed my current position in May 1998.

**Q. PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND EXPERIENCE IN THE TELECOMMUNICATIONS INDUSTRY.**

**A.** My educational background and experience in the telecommunications industry is described in detail at Rebuttal Exhibit GTC-1. As highlighted therein, prior to joining Verizon, I was a corporate attorney at Skadden, Arps, Slate, Meagher &

1 Flom LLP, and at Milbank, Tweed, Hadley & McCloy, focusing on project  
2 finance and other corporate issues. I received a J.D.. from Yale Law School in  
3 1992 and a B.S. from the United States Military Academy at West Point in 1984.  
4 Prior to practicing law, I served as an officer in the United States Army.  
5

6 **Q. PLEASE STATE IN GENERAL TERMS YOUR RESPONSIBILITIES.**

7 A. My principal areas of responsibility are negotiating, arbitrating and litigating  
8 contractual arrangements and disputes under the Telecommunications Act of  
9 1996, and providing legal advice to Verizon's product managers for  
10 interconnection and related matters.  
11

## 12 **II. PURPOSE AND OVERVIEW OF TESTIMONY**

13 **Q. WHAT IS THE PURPOSE OF THE DIRECT TESTIMONY OF THE**  
14 **PRICING TERMS AND CONDITIONS PANEL ON THE MEDIATION**  
15 **ISSUES IN THIS PROCEEDING?**

16 A. To the extent that the mediation issues have not been resolved, the purpose of this  
17 testimony is to explain the contract provisions Verizon VA proposes with respect  
18 to the Pricing Terms and Conditions issues, as well as respond, to the contract  
19 language and positions of the Petitioners on these issues.  
20

21 **Q. CAN YOU PROVIDE AN OVERVIEW OF THE PRICING TERMS AND**  
22 **CONDITIONS ISSUES THAT WERE ADDRESSED IN MEDIATION?**

23 A. First, there is an overarching issue between Verizon VA and WorldCom regarding  
24 the appropriate contract language that should reflect the parties' rights and

1 obligations with respect to pricing terms and conditions (including Issue Nos. IV-  
2 32 (sub-issue 4), IV-36, and VI-1). Verizon VA's proposed contract language  
3 generally is found in the Pricing Attachment of Verizon VA's proposed  
4 interconnection agreement (filed as Exhibit C-1 to Verizon VA's Answer). To  
5 the extent not resolved in mediation, this testimony will highlight why the  
6 Commission should order inclusion of the Pricing Attachment of Verizon VA's  
7 proposed interconnection agreement as part of the final interconnection agreement  
8 between Verizon VA and WorldCom.

9  
10 Second, there is an overarching issue common to WorldCom and AT&T that  
11 relates to the potential interplay between the interconnection agreement and any  
12 tariffs that Verizon VA may file with the Virginia Commission in the future  
13 (Issue Nos. III-18, IV-30, IV-32, IV-36, and VII-23 through VII-25). Verizon VA  
14 has retail and collocation tariffs on file with the Virginia Commission, but it has  
15 not filed a UNE tariff in Virginia. Nevertheless, should Verizon VA file a UNE  
16 tariff in Virginia, the rates, terms, and conditions of the tariff should supersede  
17 those of the interconnection agreements with WorldCom and AT&T. Moreover,  
18 to the extent that another carrier successfully adopts in another state Verizon  
19 VA's agreements with WorldCom or AT&T (including the pricing terms and  
20 conditions therein), Verizon VA must ensure recognition of tariffs in other states  
21 even though Verizon VA may not yet have such a tariff in Virginia.

1 Finally, there are three issues previously grouped in pleadings with the pricing  
2 terms and conditions issues, but more appropriately addressed by other panels.  
3 First, for Issue Nos. IV-31 (rates for exchange access services) and IV-37 (meet  
4 point billing arrangements), Verizon VA's proposed contract language is  
5 addressed within its proposed interconnection attachment. Accordingly, Verizon  
6 VA refers to the testimony of its Network Architecture Panel on these issues.  
7 Second, it appears that Issue IV-35 (reciprocal compensation terms) will be  
8 addressed in the context of Issue I-5 (addressing reciprocal compensation).  
9

10 **Q. DID THE PARTIES RESOLVE ANY PRICING TERMS AND**  
11 **CONDITIONS ISSUES AS A RESULT OF THE MEDIATION?**

12 A. Yes. It is this Panel's understanding that Verizon VA reached resolution with  
13 WorldCom or AT&T as appropriate with respect to Issues IV-33, VI-1(J), VI-  
14 1(K), VI-3(D), VI-3(E), VI-3(F), and VII-13. Accordingly, the Panel does not  
15 address those issues herein. To the extent that the Panel has misunderstood  
16 resolution of the issues, the Panel reserves the right to address any unresolved  
17 issues in its rebuttal testimony.  
18

19 **III. VERIZON VA'S PRICING ATTACHMENT (Including Issue Nos. IV-32 (Sub-**  
20 **Issue 4), IV-36, and VI-1))**

21 **Q. PLEASE DESCRIBE VERIZON VA'S PROPOSED PRICING**  
22 **ATTACHMENT FOR THE WORLDCOM/VERIZON VA**  
23 **INTERCONNECTION AGREEMENT.**

1 A. Verizon VA's proposed Pricing Attachment is contained in Verizon VA's  
2 proposed interconnection agreement for WorldCom filed as Exhibit C-1 to  
3 Verizon VA's Answer. It contains five sections as follows:  
4 1. General  
5 2. Verizon Telecommunications Services Provided to WorldCom for  
6 Resale Pursuant to the Resale Attachment  
7 3. WorldCom Prices  
8 4. Section 271  
9 5. Regulatory Review of Prices

10  
11 **Q. PLEASE DESCRIBE VERIZON VA'S PROPOSED SECTION 1**  
12 **(GENERAL).**

13 A. Verizon VA refers to Section 1 of its proposed Pricing Attachment as a  
14 "waterfall" provision because it establishes a "roadmap" to and priority for  
15 applicable rates. Pursuant to Section 1, rates are determined as follows: (1) if  
16 there is a rate for the subject service set forth in any applicable tariff, such rates  
17 applies; (2) in the absence of a legally effective tariff rate or a rate that has  
18 otherwise been approved or allowed to go into effect by the Commission or  
19 Virginia Commission, if there is a rate for the subject service set forth in  
20 Appendix A to the Pricing Attachment, such rate shall apply, as modified by any  
21 new rates that are approved or otherwise allowed to legally go into effect by the  
22 Commission or Virginia Commission; (3) in the absence of a legally effective  
23 tariff rate, or a rate that has otherwise been approved or allowed to go into effect  
24 by the Commission or Virginia Commission, or a rate set forth in Appendix A to  
25 the Pricing Attachment, if there is a rate for the subject service set forth in other



1 provisions of the interconnection agreement, such rate shall apply, as modified by  
2 any new rate that is approved or allowed to go into effect by the Commission or  
3 Virginia Commission; and finally (4) if none of the foregoing apply, the rate shall  
4 be as the parties may mutually agree in writing.  
5

6 For convenience of reference, Section 1 is set forth below:

7 1. General  
8

9 1.1 As used in this Attachment, the term "Charges" means the  
10 rates, fees, charges and prices for a Service.  
11

12 1.2 Except as stated in Section 2 or Section 3, below, Charges  
13 for Services shall be as stated in this Section 1.  
14

15 1.3 The Charges for a Service shall be the Charges for the  
16 Service stated in the Providing Party's applicable Tariff.  
17

18 1.4 In the absence of Charges for a Service established  
19 pursuant to Section 1.3, the Charges shall be as stated in Appendix  
20 A of this Pricing Attachment.  
21

22 1.4 The Charges stated in Appendix A of this Pricing  
23 Attachment shall be automatically superseded by any applicable  
24 Tariff Charges. The Charges stated in Appendix A of this Pricing  
25 Attachment also shall be automatically superseded by any new  
26 Charge(s) when such new Charge(s) are required by any order of  
27 the Commission or the FCC, approved by the Commission or the  
28 FCC, or otherwise allowed to go into effect by the Commission or  
29 the FCC (including, but not limited to, in a Tariff that has been  
30 filed with the Commission or the FCC), provided such new  
31 Charge(s) are not subject to a stay issued by any court of  
32 competent jurisdiction.  
33

34 1.5 In the absence of Charges for a Service established  
35 pursuant to Sections 1.3 through 1.5, if Charges for a Service are  
36 otherwise expressly provided for in this Agreement, such Charges  
37 shall apply.  
38

39 1.6 In the absence of Charges for a Service established  
40 pursuant to Sections 1.3 through 1.6, the Charges for the Service

1 shall be the Providing Party's FCC or Commission approved  
2 Charges.

3  
4 1.7 In the absence of Charges for a Service established  
5 pursuant to Sections 1.3 through 1.7, the Charges for the Service  
6 shall be mutually agreed to by the Parties in writing.  
7

8 **Q. HAVE VERIZON VA AND WORLDCOM REACHED AGREEMENT**  
9 **WITH RESPECT TO SECTION 1 (GENERAL)?**

10 A. No. Verizon VA and WorldCom have not reached agreement. The main dispute  
11 regarding this section seems to be Verizon VA's proposal regarding the effect of  
12 applicable tariffs. This issue is discussed in more detail below and is shared with  
13 AT&T.  
14

15 **Q. WHY SHOULD THE COMMISSION ORDER INCLUSION OF SECTION**  
16 **1 (GENERAL) OF VERIZON'S PROPOSED PRICING ATTACHMENT IN**  
17 **THE VERIZON-WORLDCOM INTERCONNECTION AGREEMENT TO**  
18 **THE EXTENT THAT THE PARTIES HAVE NOT ALREADY REACHED**  
19 **AGREEMENT?**

20 A. The Commission should order inclusion of Verizon's Pricing Attachment because  
21 it is drafted to provide a simple, appropriate and nondiscriminatory roadmap to  
22 applicable rates. By incorporating any applicable tariffs in Section 1 of the  
23 Pricing Attachment, Verizon VA seeks to ensure that prices are consistent, fair  
24 and non-discriminatory throughout the service area covered by its interconnection  
25 agreement. By referencing tariffs, the parties need not revisit or re-litigate  
26 applicable prices, but can rely on the Virginia Commission's authority and due

1 process to ensure that rates are just and reasonable. Moreover, as tariffs may be  
2 revised throughout the term of the agreement, Verizon's proposed Section 1 of the  
3 Pricing Attachment ensures that the interconnection agreement remains up-to-date  
4 without the need for further amendment. To the extent that products or services  
5 are not covered by a Tariff, Verizon VA's proposed Pricing Attachment  
6 incorporates Appendix A, which addresses the recurring and non-recurring rates  
7 and charges for interconnection services and UNEs as well as the avoided cost  
8 discount for resale. The prices to be included in Appendix A to the Pricing  
9 Attachment are being addressed in the cost portion of this arbitration.  
10

11 **Q. HAVE VERIZON VA AND WORLDCOM REACHED AGREEMENT**  
12 **WITH RESPECT TO SECTION 2 (PRICING TERMS AND CONDITIONS**  
13 **FOR RESALE)?**

14 A. Yes.  
15

16 **Q. PLEASE EXPLAIN VERIZON VA'S PROPOSAL WITH RESPECT TO**  
17 **SECTION 3 (\*\*CLEC PRICES).**

18 A. Section 3 of the Pricing Attachment makes clear that the rates that CLECs may  
19 charge Verizon VA for the services they provide to Verizon VA must be cost-  
20 justified. Accordingly, absent a Commission or VA Commission finding that a  
21 higher rate is justified, CLEC rates should not exceed Verizon VA's charges for  
22 comparable services. This proposed contract language is raised and discussed  
23 with respect to Issue No. I-9 discussed in the Direct Testimony of this Panel on

1 non-mediation issues. The Panel refers to and incorporates herein its testimony  
2 on Issue No. I-9 as a basis for suggesting that the Commission order that the  
3 WorldCom/Verizon VA interconnection agreement include Section 3 of Verizon  
4 VA's proposed Pricing Attachment.

5  
6 **Q. PLEASE EXPLAIN VERIZON VA'S PROPOSAL WITH RESPECT TO**  
7 **SECTION 4 (SECTION 271).**

8 A. In Section 4 of the Pricing Attachment, Verizon seeks recognition of any rights it  
9 may have or acquire pursuant to Section 271 of the Act to establish rates in a  
10 manner that differs from the manner in which it must set charges pursuant to  
11 Section 251 of the Act. This proposed contract language is raised and discussed  
12 with respect to Issue No. VI-1(J), which has been resolved by the parties.  
13 Verizon VA will conform this section to the parties' agreement.

14  
15 **Q. HAVE VERIZON VA AND WORLDCOM REACHED AGREEMENT**  
16 **WITH RESPECT TO SECTION 5 (REGULATORY REVIEW OF**  
17 **PRICES).**

18 A. Yes.

19  
20 **Q. HOW DOES WORLDCOM'S PROPOSED PRICING ATTACHMENT**  
21 **DIFFER FROM THAT OF VERIZON VA'S?**

22 A. WorldCom appears to acknowledge the potential applicability of tariffs rates, as  
23 it proposes to incorporate charges from Verizon VA's current tariffs into its

1 proposed Table 1 to its Pricing Attachment. However, WorldCom seeks to  
2 inappropriately and unfairly control the effectiveness of any changes to applicable  
3 tariff rates by inserting discriminatory provisions regarding the effective date of  
4 tariff changes and onerous provisions requiring the parties to constantly amend  
5 Table 1 to correspond to any tariff changes. *See* WorldCom's Proposed  
6 Attachment I, Price Schedule, Section 1.1.

7  
8 In Section 1.3 of WorldCom's proposed Pricing Attachment, WorldCom attempts  
9 to restrict Verizon VA's ability to modify rates to those specifically listed in  
10 Table 1. WorldCom further attempts to shift to Verizon VA responsibility for  
11 costs incurred for "systems" or "infrastructure" necessary to provide services  
12 covered by the interconnection agreement. WorldCom should not be permitted to  
13 prospectively foreclose Verizon VA's opportunity to recover its costs of meeting  
14 its obligations pursuant to the Act.

15  
16 Having proposed in Section 1.4 the onerous requirement of constantly updating  
17 and revising Table I, rather than making a more efficient reference to applicable  
18 tariffs or otherwise legally effective rates, WorldCom then seeks to shift  
19 additional administrative burdens to Verizon VA. Specifically, WorldCom  
20 suggests that Verizon VA be required to bear the additional burden and costs to  
21 provide WorldCom with electronic copies of Table 1 on a monthly basis. Given  
22 the number of CLECs with which Verizon VA has interconnection agreements  
23 and the ability of WorldCom to track rates for itself, there is no reasonable basis

1 on which to foist onto Verizon VA WorldCom's own additional administrative  
2 wish list. That said, Verizon VA is certainly willing, upon reasonable request, to  
3 provide to WorldCom from time to time a copy of its then current model  
4 interconnection agreement (which includes Table 1 on prices).

5  
6 While WorldCom's proposed Table 1 is similar in concept to Verizon VA's  
7 proposed Appendix A, the prices to be set forth in the parties' pricing table will,  
8 in any case, will be addressed in the cost portion of this arbitration. In addition,  
9 particularly given the fact that Verizon VA will be providing services to dozens of  
10 carriers, it is appropriate and efficient to have the pricing table be in the same  
11 form for all of them, thereby easing both Verizon VA's and CLEC's ease of use  
12 of this document. Accordingly, once rates are set in cost portion of this  
13 arbitration, they should be memorialized in the manner Verizon VA has set out in  
14 its pricing table.

15  
16 Finally, WorldCom proposes to include various provisions in its Pricing  
17 Attachment that Verizon VA believes are more appropriately included in other  
18 sections of the parties' interconnection agreement. Specifically, these include:

- 19 • Section 1.2 of WorldCom's proposed Pricing Attachment states that rates for  
20 exchange access services should not be affected by the interconnection  
21 agreement. Verizon VA proposes a consistent provision in § 7.3.3 of its  
22 Interconnection Attachment be used instead.
- 23 • Section 4 of WorldCom's proposed Pricing Attachment broadly addresses  
24 interconnection and reciprocal compensation issues more appropriately  
25 grouped with the parties' interconnection attachment and addressed by the  
26 Network Architecture and Intercarrier Compensation Panels.

1   **Q.     WHY SHOULD THE COMMISSION REJECT SECTIONS 1.3 AND 1.4 OF**  
2           **WORLDCOM'S PROPOSED PRICING ATTACHMENT IN THE**  
3           **VERIZON-WORLDCOM INTERCONNECTION AGREEMENT (ISSUE**  
4           **IV-32)?**

5   A.    There are various separate issues in dispute relating to WorldCom's proposed  
6           Pricing Attachment, Sections 1.3 and 1.4. First, the first sentence of Section 1.3  
7           referring to payment only in accordance with the rates set forth in what  
8           WorldCom calls Table 1 - and Verizon VA calls Appendix A to the Pricing  
9           Attachment -- is generally addressed above with respect to Verizon VA's  
10          proposed "waterfall" pricing provision (Section 1 of Verizon VA's proposed  
11          Pricing Attachment). It is further addressed below in the context of the set of  
12          issues focusing on the tariff versus interconnection agreement dispute.

13  
14         Second, with respect to the second sentence of Section 1.3, WorldCom proposes  
15         that Verizon VA may recover no cost unless it is specifically provided in the  
16         interconnection agreement. To the extent that this Commission or the Virginia  
17         Commission recognizes Verizon VA's right to recover costs outside the rates  
18         contemplated in this interconnection agreement, Verizon VA should not be  
19         required to contractually bargain away such a right. Put another way, if Verizon  
20         VA provides a service to WorldCom, it should be compensated for doing so; and  
21         the rate of compensation should be the rate that is legally effective.

22

1 Third, with respect to WorldCom's proposed Section 1.4, WorldCom suggests the  
2 need to obtain revised copies of the pricing tables on a monthly basis. However,  
3 in the parties' mediation and subsequent discussions, the parties are working to  
4 identify a resolution satisfactory to both parties. Verizon VA will attempt to  
5 accommodate WorldCom's request with information kept as part of Verizon VA's  
6 normal course of business.

7  
8 **IV. INTERPLAY OF TARIFFS AND INTERCONNECTION AGREEMENTS**  
9 **(Issue Nos. III-18, IV-30, IV-32, IV-36, IV-85 and VII-23 through VII-25)**

10 **Q. IN WHAT PROPOSED CONTRACT PROVISIONS DO THE PARTIES**  
11 **RAISE THE ISSUE OF THE INTERPLAY BETWEEN TARIFFS AND**  
12 **INTERCONNECTION AGREEMENTS?**

13 A. With respect to Verizon's proposed provisions to WorldCom, the following  
14 specific sections raise the issue of the interplay between tariffs and  
15 interconnection agreements:

16 • **Agreement Preface, sections 1.1 through 1.3:**

17 1.1 This Agreement includes: (a) the Principal Document; (b) the  
18 Tariffs of each Party applicable to the Services that are offered for  
19 sale by it in the Principal Document (which Tariffs are  
20 incorporated and made a part hereof this Agreement by reference);  
21 and, (c) an Order by a Party that has been accepted by the other  
22 Party.

23  
24 1.2 Conflicts among provisions in the Principal Document, Tariffs,  
25 and an Order by a Party which has been accepted by the other  
26 Party, shall be resolved in accordance with the following order of  
27 precedence, where the document identified in subsection "(a)" shall  
28 have the highest precedence: (a) the Principal Document; (b) the  
29 Tariffs; and, (c) an Order by a Party that has been accepted by the  
30 other Party. The fact that a provision appears in the Principal  
31 Document but not in a Tariff, or in a Tariff but not in the Principal



Document, shall not be interpreted as, or deemed grounds for finding, a conflict for the purposes of this Section I.2.

1.3 This Agreement constitutes the entire agreement between the Parties on the subject matter hereof, and supersedes any prior or contemporaneous agreement, understanding, or representation, on the subject matter hereof. Except as otherwise provisioned in the Principal Document, the Principal Document may not be waived or modified except by a written document that is signed by the Parties. Subject to the requirements of Applicable Law, a Party shall have the right to add, modify, or withdraw, its Tariff(s) at any time, without the consent of, or notice to, the other Party.

• **Agreement Preface, section 4 (Applicable Law):**

4.1 The construction, interpretation and performance of this Agreement shall be governed by (a) the laws of the United States of America and (b) the laws of the State [Commonwealth] of [STATE], without regard to its conflicts of laws rules. All disputes relating to this Agreement shall be resolved through the application of such laws.

4.2 Each Party shall remain in compliance with Applicable Law in the course of performing this Agreement.

4.3 Neither Party shall be liable for any delay or failure in performance by it that results from requirements of Applicable Law, or acts or failures to act of any governmental entity or official.

4.4 Each Party shall promptly notify the other Party in writing of any governmental action that limits, suspends, cancels, withdraws, or otherwise materially affects, the notifying Party's ability to perform its obligations under this Agreement.

4.5 If any provision of this Agreement shall be invalid or unenforceable under Applicable Law, such invalidity or unenforceability shall not invalidate or render unenforceable any other provision of this Agreement, and this Agreement shall be construed as if it did not contain such invalid or unenforceable provision; provided, that if the invalid or unenforceable provision is a material provision of this Agreement, or the invalidity or unenforceability materially affects the rights or obligations of a Party hereunder or the ability of a Party to perform any material provision of this Agreement, the Parties shall promptly renegotiate in good faith and amend in writing this Agreement in order to

1 make such mutually acceptable revisions to this Agreement as may  
2 be required in order to conform the Agreement to Applicable Law.

3  
4 4.6 If any legislative, regulatory, judicial or other governmental  
5 decision, order, determination or action, or any change in  
6 Applicable Law, materially affects any material provision of this  
7 Agreement, the rights or obligations of a Party hereunder, or the  
8 ability of a Party to perform any material provision of this  
9 Agreement, the Parties shall promptly renegotiate in good faith and  
10 amend in writing this Agreement in order to make such mutually  
11 acceptable revisions to this Agreement as may be required in order  
12 to conform the Agreement to Applicable Law.

13  
14 4.7 Notwithstanding anything in this Agreement to the contrary,  
15 if, as a result of any legislative, judicial, regulatory or other  
16 governmental decision, order, determination or action, or any  
17 change in Applicable Law, Verizon is not required by Applicable  
18 Law to provide any Service, payment or benefit, otherwise required  
19 to be provided to \*\*CLEC hereunder, then Verizon may  
20 discontinue the provision of any such Service, payment or benefit,  
21 and \*\*CLEC shall reimburse Verizon for any payment previously  
22 made by Verizon to \*\*CLEC that was not required by Applicable  
23 Law. Verizon will provide thirty (30) days prior written notice to  
24 \*\*CLEC of any such discontinuance of a Service, unless a different  
25 notice period or different conditions are specified in this  
26 Agreement (including, but not limited to, in an applicable Tariff) or  
27 Applicable Law for termination of such Service in which event  
28 such specified period and/or conditions shall apply.

29  
30 • **Pricing Attachment, sections 1 and 2 (set forth above).**

31 With respect to Verizon's proposed provisions to AT&T, the following specific  
32 sections raise the issue of the interplay between tariffs and interconnection  
33 agreements:

34 1.0 As used in this Agreement, the following terms shall have  
35 the meanings specified below in this Section 1. All capitalized  
36 terms used but not defined shall have the meanings set forth in the  
37 Act. Where a term is defined in both this Agreement and in a  
38 Verizon Tariff governing the provision of any services,  
39 arrangements, or facilities provided hereunder, the term as defined  
40 in the Verizon Tariff shall control, except as otherwise provided  
41 pursuant to an order by the Virginia State Corporation Commission

1 (“Commission”) in an arbitration proceeding between the Parties  
2 pursuant to Section 252 of the Act.  
3

4 1.77 “Tariff” means any applicable federal or state tariff of a  
5 Party, as may be amended by the Party from time to time, under  
6 which a Party offers a particular service, facility, or arrangement.  
7 A Tariff shall not include any “Statement of Generally Available  
8 Terms and Conditions” (“SGAT”) which Verizon has filed or may  
9 file pursuant to Section 252(f) of the Communications Act of 1934,  
10 47 U.S.C. § 252(f).  
11

12 2.1 All references to Sections, Attachments, Exhibits and  
13 Schedules shall be deemed to be references to Sections,  
14 Attachments, Exhibits and Schedules to this Agreement unless the  
15 context shall otherwise require or as specifically provided herein.  
16 The headings used in this Agreement are inserted for convenience  
17 of reference only and are not intended to be a part of or to affect  
18 the meaning of this Agreement. Unless the context shall otherwise  
19 require or as otherwise specifically provided herein, any reference  
20 to any agreement, other instrument (including Verizon or other  
21 third party offerings, guides or practices), statute, regulation, rule  
22 or Tariff is to such agreement, other instrument, statute, regulation,  
23 rule or Tariff, as amended and supplemented from time to time  
24 (and, in the case of a statute, regulation, rule or Tariff, to any  
25 successor provision).  
26

27 2.2 The terms and conditions of any and all Attachments,  
28 Schedules and Exhibits hereto, as amended from time to time by  
29 mutual agreement of the Parties, are incorporated herein by  
30 reference and shall constitute part of this Agreement as if fully set  
31 forth herein. This Agreement shall be construed and/or interpreted  
32 wherever possible to avoid conflict between the provisions hereof  
33 and the Attachments, Schedules or Exhibits hereto. If any  
34 provision contained in this main body of the Agreement and any  
35 Attachment, Schedule or Exhibit hereto cannot be reasonably  
36 construed or interpreted to avoid conflict, the provision contained  
37 in this main body of the Agreement shall prevail.  
38

39 2.3 Each Party hereby incorporates by reference those  
40 provisions of its Tariffs that govern the provision of any of the  
41 services or facilities provided hereunder. Subject to the terms set  
42 forth in Section 20 regarding rates and charges, to the extent any  
43 provision of this Agreement and an applicable Tariff cannot be  
44 reasonably construed or interpreted to avoid conflict, the provision  
45 contained in this Agreement (including without limitation its  
46 Attachments, Exhibits and Schedules) shall prevail. In those

1 instances where the Tariff and the Agreement address the same  
2 subject matter and there is no conflict, the more specific provisions  
3 shall prevail over the more general. The fact that a condition, right,  
4 obligation, or other term appears in this Agreement but not in any  
5 such Tariff or in such Tariff but not in this Agreement, shall not be  
6 interpreted as, or be deemed grounds for finding, a conflict for  
7 purposes of this Section 2.  
8

9 **2.4 Other Definitional Provisions.** The terms defined in this  
10 Agreement include the plural as well as the singular. Unless  
11 otherwise expressly stated, the words “herein”, “hereof”,  
12 “hereunder”, and other words of similar import refer to this  
13 Agreement as a whole. The words “include” and “including” shall  
14 not be construed as terms of limitation. The word “day” or “days”  
15 shall mean calendar day(s) unless otherwise designated.  
16

17 **20.2** Where there is an applicable Tariff, the rates and charges  
18 contained in that Tariff shall apply except if the Parties agree in  
19 writing that other rates and charges shall apply or if the  
20 Commission issues an effective order that other rates and charges  
21 shall apply. In addition, the rates and charges set forth in Exhibit A  
22 shall be superseded, on a prospective basis (unless the  
23 Commission, the FCC or other governmental body of competent  
24 jurisdiction orders that such new rates or charges be applied on  
25 other than a prospective basis (e.g., retroactive true-up), in which  
26 case the Parties shall comply with the terms of such order, to the  
27 extent that it is effective), by any new rate or charge when such  
28 new rate or charge is required by any order of the Commission, the  
29 FCC or other governmental body of competent jurisdiction,  
30 approved by the Commission, the FCC or other governmental body  
31 of competent jurisdiction, or otherwise allowed to go into effect,  
32 provided such new rates or charges are not subject to a stay issued  
33 by any court of competent jurisdiction; provided further that AT&T  
34 may not charge Verizon a rate higher than the Verizon rates and  
35 charges for the same services, facilities and arrangements.  
36

37 **Q. WHAT DOES VERIZON PROPOSE WITH RESPECT TO THE**  
38 **INTERPLAY OF TARIFFS AND INTERCONNECTION AGREEMENTS?**

39 **A.** As discussed above, Verizon VA incorporates applicable tariffs to ensure that  
40 prices, terms and conditions are consistent, fair and non-discriminatory  
41 throughout the service area covered by the agreement. By referencing Verizon

1 VA's appropriate tariffs in the interconnection agreement, the parties avoid  
2 litigation by relying on the Virginia Commission's authority over rates, terms and  
3 conditions. If a tariff is revised during the term of the agreement, Verizon ensures  
4 that the agreement remains up-to-date without the need for further amendment.  
5 Further, to the extent that products or services are not covered in a tariff,  
6 Verizon's proposed agreement incorporates Appendix A, or a pricing schedule,  
7 which addresses the recurring and non-recurring rates and charges for  
8 interconnection services, UNEs and the avoided cost discount for resale. In  
9 addition, many of Petitioners' complaints about the applicability of Verizon VA's  
10 tariffs are misplaced because Verizon does not have a UNE tariff in Virginia.

11  
12 **Q. WHAT DO WORLDCOM AND AT&T PROPOSE?**

13 A. WorldCom proposes that the rates contained in the Pricing Schedule "trump" any  
14 tariff approved by this Commission or the Virginia Commission. WorldCom also  
15 proposes that the rates in the Pricing Schedule remain fixed for the duration of  
16 WorldCom's and Verizon VA's agreement. If this Commission or the Virginia  
17 Commission modifies Verizon VA's rates, WorldCom proposes that the  
18 modifications would not affect the WorldCom-Verizon VA agreement unless  
19 WorldCom consents in writing or the appropriate commission enters an  
20 "affirmative order."<sup>1</sup>

21  

---

<sup>1</sup> WorldCom proposed interconnection agreement, Part A §§ 1.3.1 - 1.3

1 Similarly, AT&T contends that tariffs should not supercede the negotiated  
2 interconnection agreement. AT&T also asserts that its proposal would preserve  
3 Verizon VA's right to file tariffs to supplement the rates, terms and conditions of  
4 the AT&T-Verizon VA agreement in a manner that is consistent and appropriate  
5 with the agreement. Nevertheless, AT&T does not explain how Verizon VA's  
6 right is preserved or how a tariff would be deemed appropriate and consistent  
7 with the contract.

8  
9 Both Petitioners' proposals would effectively give them a right to veto Verizon  
10 VA's commission-approved tariffs. The Commission should reject their  
11 proposals because their arguments ignore the fact that Petitioners actively  
12 participate in tariff filings. Both Petitioners have participated in numerous  
13 Verizon VA tariff filings and their complaints regarding Verizon's "unilateral"  
14 ability to supercede the subsequent agreement should be dismissed.

15  
16 **Q. WHY ARE PETITIONERS' COMPLAINTS ABOUT VERIZON VA'S**  
17 **TARIFF FILINGS UNJUSTIFIED?**

18 A. When Verizon VA files a tariff with the Virginia Commission, "any interested  
19 person" is given an opportunity to participate in a hearing before the Virginia  
20 Commission. In fact, both AT&T and WorldCom participated in proceedings in  
21 which Verizon's rates for Virginia were established.

1 AT&T and WorldCom's position also assumes that rates will only increase, not  
2 decrease. If Verizon's rates do decrease, as reflected in the appropriate Verizon  
3 tariff, then Petitioners would receive the benefit of that price decrease. Under  
4 their proposal, AT&T and WorldCom continue to receive this benefit.  
5 Nevertheless, if Verizon's rates increase, pursuant to Petitioners' proposal,  
6 Verizon would be locked in at the rate in the interconnection agreement.  
7 WorldCom and AT&T want to be able to choose the lower rate out of the tariff  
8 and force Verizon to abide by the interconnection agreement rate if rates increase  
9 -- even when Petitioners have participated in a Virginia Commission proceeding  
10 approving the rate increase.

11  
12 Petitioners' proposals present another problem for Verizon VA if other carriers  
13 opt into Petitioners' agreements. In effect, if other carriers opt into the  
14 Petitioners' agreements, then the tariff process could be rendered moot. Each  
15 carrier who opts into WorldCom's and AT&T's agreement would be given the  
16 same right to veto Verizon VA's commission-approved tariff. Under Petitioners'  
17 proposal, even if Petitioners, or other carriers, participate in Verizon VA's tariff  
18 filing, they could circumvent the official tariff process.

19  
20 **Q. HAVE THERE BEEN ANY RECENT STATE DECISIONS ON THIS**  
21 **ISSUE?**

22 **A.** Yes. On July 30, 2001, the New York Public Service Commission rejected  
23 AT&T's arguments on this issue. *Joint Petition of AT&T Communications of*

1        *New York, Inc., TCG New York Inc. and ACC Telecom Corp. Pursuant to Section*  
2        *252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an*  
3        *Interconnection Agreement with Verizon New York Inc., N.Y. P.S.C. Case 01-C-*  
4        0095 (July 30, 2001) at 2-6. The New York Commission, at page 4, observed that  
5        “as a general matter the tariff provisions provide a reasonable basis for  
6        establishing a commercial relationship . . . we will conform the new agreement to  
7        Verizon’s tariff where it is possible to do so.” Verizon VA asks this Commission  
8        to do the same.

9        **Q        DOES THIS CONCLUDE YOUR TESTIMONY?**

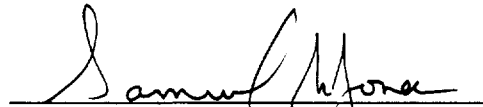
10      **A.**       Yes, it does.  
11



**Declaration of Steven J. Pitterle**

I declare under penalty of perjury that I have reviewed the foregoing panel testimony and that those sections as to which I testified are true and correct.

Executed this 17<sup>th</sup> day of August, 2001.

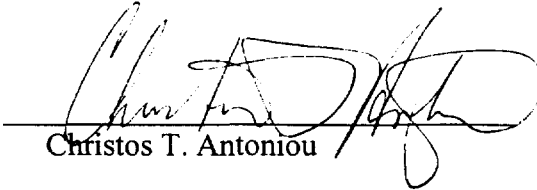
A handwritten signature in cursive script, appearing to read "Samuel M. Jones", is written over a horizontal line.

Samuel M. Jones  
On behalf of  
Steven J. Pitterle

**Declaration of Christos T. Antoniou**

I declare under penalty of perjury that I have reviewed the foregoing testimony and confirmed that it is true and correct.

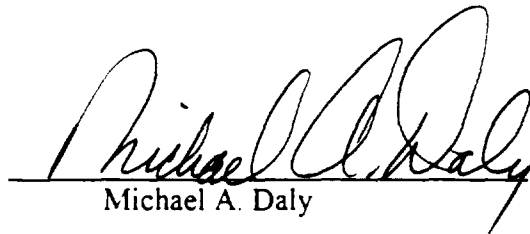
Executed this 17<sup>th</sup> day of August, 2001.

  
Christos T. Antoniou

**Declaration of Michael A. Daly**

I declare under penalty of perjury that I have reviewed the foregoing panel testimony and that those sections as to which I testified are true and correct.

Executed this 17<sup>th</sup> day of August, 2001.

  
Michael A. Daly



**CURRICULUM VITAE FOR PRICING TERMS AND CONDITIONS PANELISTS**

**I. CHRISTOS T. ANTONIOU**

Mr. Antoniou earned his Bachelor of Science degree from the United State Military Academy at West Point in 1984. In 1992, he received his Juris Doctorate from Yale Law School. Mr. Antoniou has served as an attorney at Verizon for the past three years. His primary areas of responsibility are negotiating, arbitrating and litigating contractual arrangements and disputes under the Telecommunications Act of 1996, and providing legal advice to Verizon's product managers for interconnection and related matters. Prior to joining Verizon, Mr. Antoniou was a corporate attorney at Skadden, Arps, Slate, Meagher & Flom LLP, and at Milbank, Tweed, Hadley & McCloy, in each case at their Washington, D.C. offices, focusing on project finance and other corporate issues. In addition to practicing law, Mr. Antoniou was an officer in the United States Army.